

Present:

Mr. Justice Md. Khasruzzaman

Civil Revision No. 1205 of 2016

Md. Abdul Mannan

.....Petitioner

Alhaj M.A. Khair being dead his heirs:

Nilufar Khair and others

.....Opposite parties

Mr. Kazi Rezaul Hossain, Advocate with

Md. Ishaque Miah, Advocate

.....For the petitioner

Mr. Prince Al Masud, Advocate

.....For the opposite parties

Judgment: on 23.10.2018.

Md. Khasruzzaman, J:

On an application under section 25 of the Small Cause Courts Act, 1887, Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 20.10.2015 passed by the learned Senior Assistant Judge, 2nd Court, Dhaka in S.C.C. Suit No. 02 / 2013 allowing an application under Order 6 rule 17 of the Code of Civil Procedure, hereinafter referred to as “the Code”, should not be set aside and/or passed such other or further order or orders as to this Court may seem fit and proper.

On 03.10.2013 the predecessor of the opposite parties as plaintiff instituted S.C.C. Suit No. 02 / 2013 in the 2nd Court of Senior

Assistant Judge, Dhaka impleading the petitioner as defendant for ejectment the defendant petitioner from the suit shop.

After filing the suit the plaintiff, Alhaj M.A. Khair son of late Manik Mollah, Managing Director of M/s. Reo Movies Limited, died on 19.02.2014 and the heirs of the plaintiff were substituted on 06.03.2014.

Thereafter, the plaintiffs filed an application under Order 6 rule 17 read with section 151 of the Code for amendment of the plaint stating *inter alia* that the plaintiff, predecessor of the substituted plaintiffs, instituted the suit for ejectment the defendant from the suit shop situated at Kawran Bazar, Dhaka. The plaintiff Alhaj M.A. Khair, Managing Director, M/s. Reo Movies Limited died on 19.02.2014 and the legal representatives were substituted. The suit was filed by M/s. Reo Movies Limited represented by its Managing Director, Alhaj M.A. Khair and the said company was registered under Joint Stock Companies and Firms. Thereafter, the share holders of M/s. Reo Movies Limited elected Mr. Khairul Anam as the Managing Director of the said company on 25.09.2013. After substitution of the heirs of the plaintiff, they filed an application for amendment of the plaint in the following terms:

“ক. কায়েম মোকামের মাধ্যমে সংশোধিত মোকদমার মূল আরজীতে উল্লেখিত বাদী হিসাবে লিপিবদ্ধকৃত “১(খ) খায়রুল আনাম” শব্দ এর পরে “ম্যানেজিং ডিরেক্টর, মেসার্স রিও মুভিজ লিঃ” শব্দগুলো সংযোজিত হইবে।”

They have also stated in their application that due to bonafide mistake they did not implead Khairul Anam as the Managing Director of the company. Since the plaintiff filed the suit as a Managing Director of the company, the aforesaid amendment is necessary, otherwise they will be seriously prejudiced.

The defendant contested the application by filing written objection stating *inter alia* that the plaintiff died on 19.02.2014 and upon an application filed by the heirs of the plaintiff, they have been substituted on 06.03.2014. According to the statement of the proposed amendment for plaint that Khairul Anam was appointed as the Managing Director of M/s. Reo Movies Limited on 25.09.2013, but Alhaj Abul Khair who filed the suit on 03.10.2013, identified himself as the Managing Director of the company, and the suit was filed on 03.10.2013 by M.A. Abul Khair, at that time he was not Managing Director of the company. On some false statements the amendment application was filed. Accordingly, the application should be rejected.

After hearing both the sides the learned Senior Assistant Judge, 2nd Court, Dhaka and Judge of the Court of Small Causes, Dhaka allowed the said application on 20.10.2015.

Being aggrieved by and dissatisfied with the said order, the defendant as petitioner filed the present revisional application before this Court and obtained the instant Rule.

Mr. Kazi Rezaul Hossain, the learned Advocate appearing with Mr. Md. Ishaque Miah, the learned Advocate on behalf of the petitioner, submits that at the time of filing the suit Mr. M.A. Abul Khair was not the managing director of the company and the petitioner came into a contract with M/s. Reo Movies Limited not with Mr. M.A. Abul Khair, and at the time of filing the suit Mr. M.A. Abul Khair identified himself as Managing Director of M/s. Reo Movies Limited but in their application for amendment, it reveals that at the time of filing of the suit one Khairul Anam was the Managing Director of the company. Accordingly, if the amendment application is allowed, they will be seriously prejudiced. Mr. Kazi Rezaul Hossain, the learned Advocate further submits that after the death of M.A. Abul Khair the heirs were substituted in the suit as plaintiffs and now they have come with an application to implead the name of the company which is not permissible in law and without considering these factual aspects of the case the learned Senior Assistant Judge and Judge of the Court of Small Causes committed an error of law by allowing the application for amendment of the plaint. By referring the plaint and the application for amendment of plaint he categorically submits that the suit was filed on 03.10.2013 and plaintiff died on 19.02.2014, and the heirs of the plaintiff were substituted on 06.03.2014, and the vital aspects of this case that one Khairul Anam was elected as Managing Director of the company on 25.09.2013

which was happened before filing of the suit. Accordingly, the application for amendment is not at all maintainable which should be rejected but without considering the fact the trial Court allowed the application and thereby committed an error of law in the decision which may be interfered by this Court.

On the other hand, Mr. Prince Al Masud, the learned Advocate appearing on behalf of the plaintiff opposite parties, submits that if the application for amendment is allowed the nature and character of the suit will not be changed as they have failed to include some words after the name of the added plaintiff No. 1(Kha) as “Managing Director of M/s. Reo Movies Limited”. In support of his submission he cited a case of Md. Sirajuddin Vs. Mohibunessa and others reported in 12 BLT (AD) 139. By referring a case of Dharmalinga Chetti Vs. Krishnaswami Chetty reported in AIR 1949 Madras 467 he further submits that at the time of consideration of the application for amendment of the pleadings the truth or falsity of the allegations in the pleadings or in the amendment application should not be considered. He also submits that the Court at any stage of the proceedings can allow either party to alter or amend their pleadings. In support of his submission, he cited a case of M.A. Jahangir and another Vs. Abdul Malek and others reported in 41 DLR 389.

Heard the learned Advocates for both the sides, perused the application, impugned judgment and order, and material documents on record.

. It appears from the plaint, application for amendment of plaint and the written objection that on 03.10.2013 one Alhaj M.A. Khair identified himself as the Managing Director of M/s. Reo Movies Limited filed S.C.C. Suit No. 02 / 2013 before the learned Senior Assistant Judge, 2nd Court, Dhaka and Judge of the Court of Small Causes Court, Dhaka impleading the present petitioner as defendant for ejection the suit shop and on 19.02.2014 after the death of the plaintiff, the heirs of the plaintiff filed an application for substitution which was allowed on 06.03.2014.

It further appears from the application for amendment of the plaint that on 25.09.2013 Khairul Anam was elected as the Managing Director of M/s. Reo Movies Limited which was made before filing of the suit.

The Rule was issued on the point why the allowing order of the application for amendment of the plaint filed by the plaintiff should not be set aside.

I have consulted with the Order 6 rule 17 of the Code that the Court at any stage of the proceedings can allow either party to alter or amend their pleadings for determining the real question in controversy between the parties.

In the present case the predecessor of the plaintiffs on behalf of the M/s. Reo Movies has come into a contract with the defendant petitioner as a monthly tenant of the suit shop and after the death of the plaintiff, his heirs were substituted on 06.03.2014 and thereafter, they filed an application for amendment of the plaint to include the words “Managing Director, Messrs Reo Movies Limited” in the cause title after the name of substituted heir 1 (kha), Khairul Anam. Now, it appears that plaintiff No. 1(Kha) is the Managing Director of M/s. Reo Movies Limited and the defendant came into a contract with the Managing Director of the said company and took the suit shop as a monthly tenant.

The main question is to determine in an application under Order 6 rule 17 of the Code whether after the amendment of the pleadings the nature and character of the suit will be changed or not. After amendment of the pleadings if the nature and character of the suit is changed, in that case no application for amendment will be allowed, otherwise at any stage of the proceedings of the suit even if it is appropriate during pendency before the Appellate Division, an amendment of the pleadings may be allowed.

The power of the Court under Order 6 rule 17 of the Code is discretionary one, and is to be judicially exercise on consideration of the facts and circumstances of the case, and the Court will exercise its power after causing that the amendment is necessary to determine the

main question in controversy between the parties without prejudice the other side.

I have considered the plaint and the amendment application but I do not find any substance of the submissions of the learned Advocate for the petitioner that the nature and character of the suit has been changed by allowing the application for amendment of the plaint and thereby the trial Court committed an error of law in the decision. Accordingly, I do not find any merit of the Rule.

In the result, the Rule is discharged without any order as to costs.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

Since the S.C.C. Suit No. 02 / 2013 was filed in the year 2013, the trial Court is directed to dispose of the suit expeditiously and preferably within a period of 6(six) months from the date of receipt of this judgment.

Communicate the order.